

REMARKS

Restriction has been required by the Examiner under 35 USC 121 to one of the following groups of claims:

- I. Claims 1-11 and 18, drawn to a method of providing a mulch protective ground cover of a self-coherent particulate magnetic material, classified in class 49, subclass 9;
- II. Claims 14-17 and 20, drawn to the combination of a particulate magnetic material and a particulate magnetic attracting material, classified in class 420, subclass 9; and
- III. Claims 12, 13, and 19, drawn to the subcombination of a particulate magnetic material having a particular diameter, classified in class 420, subclass 9.

However, such a restriction does not appear proper since specific provisions are set forth in the Patent and Trademark Regulations which allow, at minimum, a product, a process of making that product, and a process of using that product to be present in the same application.

In particular, 37 CFR §1.141(b) provides that “Where claims to all three categories, product, process of making, and process of use, are included in a national application, a three way requirement for restriction can only be made where the process of making is distinct from the product. If the process of making and the product are not distinct, the process of using may be joined with claims directed to the product and the process of making the product even though a showing of distinctness between the product and process of using the product can be made.”

Thus, it appears clearly improper to separate the product (i.e., claims 14-17 and 20, from a method of preparing the product (claims 12, 13, and 19) and from the method of using it (claims 1-11 and 18) as has been done in the Restriction Requirement; since the process of making the product (claims 14-17 and 20) and the process of using the product (claims 1-11

and 18) are not distinct.

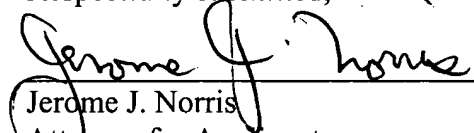
Whether one is discussing the self-coherent particulate magnetic material, the process of obtaining it or the method of using it, all three sets of claims in the grouped categories are linked so as to form a single inventive concept – that is the concept of using the self-coherent particulate magnetic material as a protective ground cover or mulch to prevent erosion by wind and/or rain or to prevent growth of undesired vegetation.

The manual of Patent Examining Procedures itself recognizes the desirability of considering the relative burdens upon applicant in Section 803:

If the search and examination of an entire application can be made without serious burden, the Examiner is encouraged to examine it on the merits, even if it includes claims to distinct or independent inventions.

In view of the close relationship (single inventive concept) among the present claims and in view of the fact that the resulting search would not create an undue burden on the Examiner, it is submitted that restriction is improper and that the Restriction Requirement should be withdrawn.

Respectfully submitted,


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